IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.32217 OF 2002 AND WRIT PETITION NO. 36047 OF 2002
and
W.M.P.NOs.46857 & 54230 OF 2002

M. Nirmala,
W/o. Manikcavasagam
President,
Unniyur Village Panchayat,
Tiruchirapalli District. .. Petitioner in WP.32217/2002

K. Sakthivelu,
Vice President,
5/35, Unniyur Panchayat Union,
Thottiyam Taluk,
Trichy District. .. Petitioner in WP.36047/2002

-Vs-

1. The District Collector,
Tiruchirapalli District. .. Respondent No.1 in both WPs

2. The Assistant Director,
Panchayat, Tiruchirapalli.

3. The District Development Officer
(Panchayat), Thottiyam,
Tiruchirapalli. .. Respondents 2 & 3 in
WP.No.32217/2002
4. The President,
Unniyur Panchayat Union,
Thottiyam Taluk,
Trichy District. .. Respondent No.2 in
WP.No.36047/2002

Petitions filed under Article 226 of the Constitution of India for the
issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.V. Raghavachari

For Respondents : Mr.V. Subbarayan
Special Govt. Pleader

:J U D G M E N T

Bereft of all unnecessary details, the basic facts giving rise to W.P.No.36047 of 2002 are as follows :-
The petitioner was elected as Ward Member of Unniyur Panchayat Union and subsequently elected as Vice President. It is alleged that the petitioner while being granted anticipatory bail by the High Court was asked to stay at Pallayamkottai and because of the condition, he was not able to attend the meetings of the Panchayat. Subsequently on 24.6.2002 in a meeting of the Panchayat Union resolution was passed relating to Agenda No.4. The translated version of the relevant portion of the aforesaid resolution filed by the learned counsel for the President of the Panchayat is extracted hereunder :

... Agenda : 4. Resolution NO.(25) placed before the Council for approval as per the resolution passed on the 30th day of April 2002 and the Vice President of the Panchayat Union Thiru.K. Sakthivel Son of Kathirvel did not attend 4 consecutive meetings and hence post of member shall be rejected and further Thirumathi N. Laxmi the senior member among the Panchayat Union Members was elected to sign the cheque- approved.

Agenda : 5 to 7 . . .

The petitioner has sought for quashing the aforesaid resolution.

2. The connected Writ Petition No.32217 of 2002 has been filed by the President of the Panchayat Union. In the said writ petition while contending that the Vice President has ceased to become a member, since he was absent on four consecutive meetings, prayer has been made for issuing a Writ of Certiorarified Mandamus to quash the notice dated 17.7.2002 directing convening of meeting of the elected representatives. The aforesaid notice, contents of which have been translated in course of hearing, indicate that the meeting has been convened for considering the question of absence of the Vice President for three consecutive meetings and for authorising another member to sign the cheques.

Section 38(j) of the Tamil Nadu Panchayats Act relates to question of disqualification on account of absence, relevant portion of which is extracted here under:

 38(j) absents himself from the meetings of the panchayat for a period of three consecutive months reckoned from the date of the commencement of his term of office, or of the last meeting which he attended, or of his restoration to office as member under sub-section (1) of section 39, as the case may be, or if within the said period, less than three meetings have been held, absents himself from the three consecutive meetings held after the said date :

Provided that no meeting from which a member absented himself shall be counted against him under this clause if -

(i) due notice of that meeting was not given to him; or

(ii) the meeting was held after giving shorter notice than that prescribed for an ordinary meeting; or

(iii) the meeting was held on a requisition of members.

Section 41 is as follows :-
 41. Authority to decide questions of disqualification of members.-
(1) Whenever it is alleged that any person who has been elected as a member of a panchayat or who becomes a member of a panchayat is not qualified or has become disqualified under sections 33,35,37,38 and 4 0, the executive authority or the commissioner or the chief executive officer as the case may be, shall by notice in writing inform such member of the allegation and place the matter at the next meeting of the panchayat concerned. If before the date of the expiry of two months from the date of receipt of such notice, such member does not apply to the prescribed judicial authority under sub-section (2), he shall became not qualified or disqualified from such date of expiry of said two months.

(2) The executive authority or the commissioner or the chief executive officer as the case may be, if so directed by the panchayat or by the State Election Commissioner, shall, or any such member or any other member may apply to the prescribed judicial authority whose decision on such allegation shall be final.

(3) Where an application has been made under sub-section(2), the member shall, pending decision on such application be entitled to act as f he is qualified or was not disqualified.

(4) Nothing contained in this section shall be deemed to affect the provision of section 39.

3. A bare perusal of the provisions contained in Section 38 makes it clear that the provisions are subject to the provisions contained in Section 41. Section 38(j) provides that the person was ceased to be a member if he had remained absent for three consecutive meetings subject to the other conditions indicated regarding notice, etc. However, this disqualification does not appear to be automatic and is subject to the provisions contained in Section 41. Section 41(1) contemplates that if the elected member has become disqualified under Section 38 which would obviously include disqualification on account of absence on three consecutive meetings as contemplated under Section 38(j), the prescribed authority is required to inform such member and place the matter at the next meeting of the panchayat concerned. If, on receipt of such notice, the member does not apply to the prescribed judicial authority under sub-section (2), he shall be disqualified from the date of expiry of the said two months. Under Section 41(2), the Executive Authority or the Commissioner or the Chief Executive Officer, if so directed by the

Panchayat or the said Election Commissioner, shall apply to the prescribed judicial authority. Even otherwise application can be filed by the concerned member of any other member. Thereafter the decision of the prescribed authority is to be rendered which shall be final.

4. A combined reading of Sections 38 and 41 makes it clear that only in cases where the concerned member does not apply under Section 41 (2) to the prescribed judicial authority,the disqualification takes effect on the expiry of two months from the date of notice received by such member. Where, however, a proceeding is initiated under Section 41(2), the member is entitled to act as if he is not disqualified.

5. In the present case, there is no material on record to indicate that notice as contemplated under Section 41 of the Act has been served on the petitioner in W.P.No.36047 of 2002. Therefore, it cannot be said that disqualification as contemplated in Section 41 has already been informed.

6. In such view of the matter, it cannot be said that the petitioner is disentitled to continue as the Member and consequently as the Vice President of the Panchayat. It is however made clear that if notice under Section 41 is served, the consequence as contemplated under Section 41(1) would ensure unless the proceedings contemplated under Section 41(2) are initiated within the stipulated period. It goes without saying that if any proceedings as contemplated under Section 41 (2) is initiated, the decision of the prescribed judicial authority would govern the field.

7. For the aforesaid reasons, W.P.No.36047 of 2002 is allowed and the connected W.P.No.32217 of 2002 is disposed of with the observation that the authorities are to take further action in accordance with Sections 38 and 41 of the Tamil Nadu Panchayats Act as clarified in the present judgment. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes
Internet : Yes

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To

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Tiruchirapalli District.

2. The Assistant Director,
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3. The District Development Officer

(Panchayat), Thottiyam,
Tiruchirapalli.

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